Justice of the Peace
and
LOCAL GOVERNMENT REVIEW

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NOTES OF THE WEEK

Mental Instability and Cruelty

It is well established that, as in criminal cases, a person who by reason of insanity does not know the nature and quality of his acts or does not know that they are wrong is not to be held responsible for them, and therefore cannot be held guilty of matrimonial cruelty.

In *Sabin* v. *Sabin, The Times,* February 5, Collingwood, J., granted a decree to a husband on the ground of his wife's cruelty where her mental condition was the basis of her defence. It was submitted that owing to her addiction to drugs she was mentally ill at the relevant times and must be excused for acts upon impulses which she could not resist. For a time the wife had been a certified patient in a mental hospital.

In the course of his judgment, the learned Judge said that according to the medical evidence she was subject to abnormal personality traits and basic instability but not mental illness at the relevant times. It was impossible to come to the conclusion that either branch of the M'Naghten Rules applied although there was no doubt that her judgment was impaired. As her responsibility was established it was not necessary to show that her conduct had proceeded from malignity or intention to harm the husband who had suffered seriously in health as the wife realized.

There are many instances of cruelty in which it could truly be said that the conduct is due to mental instability causing lack of control and want of judgment, but that does not mean that those who are guilty of such conduct are not to be held responsible or that those who suffer by it have no remedy. A leading case on illness as a contributing cause to cruelty is *Squire* v. *Squire* [1948] 2 All E.R. 51, in which the Court of Appeal held that a person must be presumed to intend the natural and probable consequences of his acts and that where the acts complained of were due to illness (not amounting to insanity) they might amount to cruelty although there was no special or malignant intention. Another authority is *White* v. *White* [1949] 2 All E.R. 339.

Sunday Observance

The *Manchester Guardian* of February 10 contained a report of a prosecution of a farmer for failing to produce to the police records of the movement of animals. It was alleged that when a police officer called, the defendant said he was too busy, but the defendant's own version was that he refused to do business of that kind on a Sunday, on which he did only necessary work, and that he had complained previously about a Sunday visit. The police, while they tried to study the convenience of people, were unable to give any assurance that Sunday visits could be avoided. For the defendant, who pleaded not guilty, his advocate quoted the Sunday Observance Act of 1677 and argued that if any citizen conscientiously objects to doing anything on a Sunday he should be allowed not to do it.

The magistrates made an order of absolute discharge, the chairman observing that the magistrates had great sympathy with his views, although the law in this case did not exclude Sunday.

There are always two sides to every question and although the police may wish to respect a man's principles they may also feel inclined to point out to him that policemen constantly have to work on Sunday, and that when they are unusually busy they have to fit in their various duties as best they can.

A Question of Bias

There is often a good deal of local interest in the matter of the grant of licences to sell intoxicants, and residents take sides and sometimes promote petitions for or against the grant. It is as well that there should be interest in such things, which affect the amenities of a neighbourhood.

Justices need to be careful about taking sides, or rather, careful about acting as licensing justices when they have taken a part in such local activities. Recently, when licensing justices in Sussex had before them an application for an off-licence the applicant handed in a petition bearing the signatures of a large number of residents. The chairman jokingly said he hoped

that no relative of any of the justices had signed, and fortunately this had the effect of reminding one justice that she was one of the signatories. Naturally, and properly, she left the bench. We say fortunately, because if she had forgotten that she was in a position to be regarded as biased, and the licence had been granted (in fact it was not) proceedings might have been taken to set aside the grant.There is abundance of case law to show how important it is that a justice who has shown by supporting or opposing the grant of a licence, or by taking up a strong attitude about total abstinence, that he may not be free from bias, ought not to take part in proceedings of this kind.

Plenty of Room on the Adjacent Car Park

One must recognise that in many busy towns and cities there are wholly inadequate off-street parking facilities, but experience seems to show that many motorists are unwilling to make use of such facilities when they do exist because (i) they have to walk a few yards extra and (ii) they may well have to pay a small charge for using the car park.

In the *East Anglian Daily Times* of January 30 is a report of a case in which a café proprietor was fined for causing unnecessary obstruction when he left his car outside his café. A pantechnicon was parked opposite to the car. Other vehicles were unloading a short distance away. A police constable had to take up traffic duty to enable traffic to flow in a single alternate line. The constable, giving evidence of these facts, stated " there was plenty of room on Risbygate car park 75 *yds.* away."

The defendant in this case was fined only £1 and the chairman of the bench is reported to have said that it was a technical offence. Without commenting in any way on the penalty imposed in this particular case, we should like to suggest that courts, in deciding what is the appropriate fine, within the maximum for such an offence, may well take into account the fact that the offence apparently need not have been committed if the defendant had chosen to use off-street parking facilities which were available. If motorists find that it is much more expensive not to use car parks than to use them a considerable number of vehicles which now obstruct the streets may rest at peace in car parks while their drivers transact their business or enjoy their pleasures.

Aiding and Abetting a Learner's Offence

It was established in *Rubie* v. *Faulkner* (1940) 104 J.P. 161; [1940] 1 All E.R. 285, that the supervisor of a learner-driver who fails to exercise the necessary supervision in circumstances when action by him is called for may be convicted of aiding and abetting the learner to drive without due care and attention. It is well that all concerned should bear this in mind. No doubt the recognized driving schools see to it that their instructors are well aware of their duties in this respect but when private individuals undertake the tuition of friends who wish to learn to drive the full responsibility of the supervisor may not always be appreciated.

We are interested, in this connexion, to read a report in *The Birmingham Post* of January 31, 1959, of a case in which a young man of 19 was acting as instructor to another young man aged 20. The learner was driving and he passed a halt sign without stopping and was nearly involved in a collision with another vehicle. Both he and his instructor told the police that they did not see the halt sign. It is, of course, one of an instructor's obvious duties to keep a look-out for authorized road signs and to take steps to see that the learner obeys their directions. The sequel to this incident was that the learner was fined £3, with 16*s.* 9*d.* costs for driving without due care and attention and his instructor was fined £1, with 16*s.* 8*d.* costs, for aiding and abetting the commission of that offence. It is right that publicity should be given to such a case in order to ensure that other amateur instructors appreciate their responsibilities. In this case there was no accident. The instructor might have had to pay a heavier penalty if the result of his lack of attention to his duty as supervisor had had more serious consequence.

Occupation ? Law Breaker !

The *Oxford Times* of February 6 reports a case in which a man was convicted, on his own admission, of three offences with a bicycle, *i.e.*, riding it with inefficient brakes, having no reflector and having no lights. Ten previous convictions were reported to the court and the chairman is reported as saying " His main occupation seems to be breaking the law." His other occupation was said to be that of night watchman. Fines totalling £5 10*s.* were imposed and the chairman said " I wish we could disqualify him from riding a cycle, but we have not got the powers."

From time to time magistrates' courts have to deal with offenders whose record and conduct show that they make no effort to obey the laws which should regulate their conduct, and the problem is how to deal with them when they are caught offending against these laws. When a driver is involved and his offence is one which entitles the court, on conviction, to order disqualification, this is probably the most effective way of trying to bring home to the offender that the law applies to him as it does to other people. When disqualification is not possible heavy penalties, not excluding imprisonment, may be the only way of enforcing compliance with the law for the courts cannot accept, without making every effort to prevent it, that anyone should consistently break the law in this way. The chairman's idea of disqualification for cyclists may be worth considering for persistent offenders. It could well be a power so limited as to apply only in bad cases such as the one about which we have written.

The Appropriate Penalty

There is no doubt that dangerous driving is a serious offence and the High Court has indicated from time to time that magistrates' courts should so regard it. What considerations, therefore, should influence the mind of magistrates who have to decide the appropriate penalty for defendants whom they convict for such offences ? We are prompted to consider this matter because of a case reported in the press on February 7, 1959 (we have in mind, in particular, the report in the *Manchester Guardian* and the leading article dealing with the matter) of the case of two youths aged 17 and 19 who were convicted, one of causing the deaths of two persons by dangerous driving and the other of aiding and abetting that offence. The learned Judge, in dealing with these offenders, said that they had been responsible " through shocking reckless driving on the spree " for the deaths of two people. The facts were that they had taken and driven away a car and, when followed by the police, had driven faster and faster to get away until they ran into a stationary car and killed two of its occupants. In the result each defendant was sentenced to one day's imprisonment. The learned Judge said that they had been in custody for several days prior to sentence and had had, thereby, an opportunity " to reflect on their great folly and its consequences." The driver of the car was

disqualified for driving for seven years and the other defendant for five years.

In the leading article to which we have referred, headed "Deterrents," the *Manchester Guardian* comments on the case and on the sentences imposed. It is pointed out that a "Judge" (be he a High Court Judge or a magistrate) has to make up his own mind on what is the appropriate sentence and the concluding sentence of the leading article is "what could be worse than a Judge who gave not what sentences he thought just but what others expected of him."

The moral seems to be that no two cases are exactly alike, and that, although magistrates must accept guidance from the High Court and must try to regulate their procedure accordingly, in the individual case they have to make up their own minds, on the circumstances of that case, as to how it should be dealt with.

Automatic "Shops"

The somewhat elaborate automatic machine that delivers light refreshments of various kinds for the benefit of travellers has become a familiar feature of a large railway station and no doubt serves a useful purpose. There now appears to be a considerable extension of this automatic method of trading, and the current issue of *The Inspector* (official journal of the Institute of Shops Acts Administration) contains some interesting and even astonishing information about it. It appears that in Manchester there is an automatic "shop" selling men's wear. Coins in multiples of 2*s*. 6*d*. have to be inserted and, it is said, a purchase can be made from any one of the 15,000 separate compartments. Attendants supervise the machines.

Another automatic "shop" is described which consists of a bank of automatic food selling machines outside a self-service store in Lanarkshire. The machines can take packs of different shapes so that the items can be varied according to local or seasonal demand. Two shillings is inserted and any change is returned with the article. The idea is to create an emergency shop to supply articles, mostly food, found to be most in demand, especially in the evenings or at week-ends.

If this goes on extending, the self-service store and the automatic "shop" will between them displace a large number of shop assistants, but there will always be a certain number of people who prefer a shop to a machine and to be served in the shop by a courteous assistant. The automatic "shop," like the mobile "shop," may also give rise to some new problems, to be dealt with in any new Shops Act legislation.

Unofficial Signalling Codes Can Be Dangerous

The *South Wales Weekly Argus* of January 31, 1959, includes a report of a case in which a lorry driver was fined £5 for careless driving and had his licence endorsed. According to the report he was following another lorry. The driver of the leading lorry "flashed" his tail light and the defendant assumed that this was a signal to him that it was safe for him to overtake the leading lorry. It is, apparently, an accepted code amongst lorry drivers that the flashing of the tail lights is a signal to following drivers that it is safe to overtake. The police superintendent in this case confirmed that this is so. Unfortunately, the leading driver in this case flashed his lights to indicate to the following driver that it was *not* safe to pass, because there was a vehicle approaching from the other direction. The result was a collision between the overtaking lorry (the driver of which accepted the signal to overtake) and the oncoming vehicle.

It seems clear from this case that either there should be no such signals or that their effect should be given official recognition so that the likelihood of their being misused or misunderstood is reduced to a minimum. One cannot help feeling sympathy for the overtaking driver in this case, whilst recognizing that the onus was on him, despite the signal, to be satisfied that it was safe for him to overtake.

Corroboration

In cases of rape and sexual offences against women, girls and boys, whilst the jury may convict on the uncorroborated evidence of a witness against whom the offence is alleged to have been committed, the Judge should warn the jury of the danger of doing so, and in the absence of such a warning, the conviction may be quashed, 13 *Halsbury* (2nd edn.) 765, citing *R.* v. *Salman* [1924] 18 Cr. App. Rep. 50; *R.* v. *Killick* [1924] 18 Cr. App. Rep. 120. The principle was illustrated in *R.* v. *Carvey* (*The Times*, February 11), when the Court of Criminal Appeal quashed a conviction of attempting to procure an indecent act, the complainant being a boy aged 16.

In delivering the judgment of the Court of Criminal Appeal the Lord Chief Justice referred to a passage in the summing-up by the chairman of quarter sessions as follows: "The condition of mind in which the complaining party was seen to be within a very few minutes of the conversation, might help you to say 'I am jolly sure something was said to upset him,' and if you can go that far there is some corroboration." Lord Parker said that in the view of the Court that was incapable of amounting to corroboration in that it did not implicate the appellant and it did not come from an independent source. Moreover there was no warning of the danger of convicting in such a case in the absence of corroboration and no explanation of the meaning of corroboration and the nature of corroboration.

Magistrates, who fulfil the functions of both Judge and jury in a summary trial must, as it were, direct themselves on these points about the danger of convicting in such cases without corroboration.

The essential elements constituting corroboration were laid down in *R.* v. *Baskerville* (1916) 80 J.P. 446, in which the evidence of accomplices was the matter before the Court.

Housing Revenue Account Debits

The question has recently been raised whether a housing authority meeting certain items of capital expenditure by the application of moneys from a capital fund established under s. 2 of the Local Government (Miscellaneous Provisions) Act, 1953, and resolving that the money so applied should be repaid to the fund over a short period, was entitled to regard such payments as loan charges which could properly be debited to the housing revenue account, under provisions now contained in sch. 5 to the Housing (Financial Provisions) Act, 1958, without a direction from the Minister of Housing and Local Government. Under para. 2 of the schedule (which re-enacts provisions originally contained in s. 43 of the Housing Act, 1935) loan charges are required to be debited. A resolution stipulating that moneys advanced from a capital fund shall be repaid by instalments or annuities over a specified period invests such payments with the characteristics of loan charges. They differ, however, in that since no loan consent is needed the requirement to repay is not imposed by a sanctioning authority. The local authority cannot make a contract with itself and the resolution, therefore, is nothing more than a declaration of

intention which might be revoked or modified at any time. It accordingly appears that capital fund repayments of moneys applied to meet housing expenditure are not required to be debited to the housing revenue account under para. 2 (1) (*a*) of the Housing (Financial Provisions) Act, 1958.

This being so, it might be assumed that such payments could be charged to the housing revenue account only if a direction from the Minister were obtained under the provisions of para. 4 of sch. 5 to the Act, but the requirement contained in s. 2 (4) of the Local Government (Miscellaneous Provisions) Act, 1953, is itself in point. Capital fund moneys derived from the sale of land shall, and other moneys applied from the capital fund may, if the local authority think fit, be repaid from the account to which those moneys are advanced by such annual instalments (with or without interest) and within such period as the local authority may determine. In the case mentioned the service to which the capital fund moneys have been applied is housing and, as loan repayments are by their nature a revenue expense, it follows that the repayments of the advances made from the capital fund must be charged to the housing revenue account. No directive from the Ministry is needed and the position will be the same as that which would have arisen had the capital expenditure been met out of a sanctioned loan raised by the local authority who may always, if they wish, repay a loan over a shorter period than that stipulated in the loan consent. The only difference in the case of an advance repayable to a capital fund is that the authority have complete discretion as to the period of repayment which may, therefore, exceed that which the Ministry would have allowed and result in some lessening of the annual charge.

The requirements of sch. 5 to the Housing (Financial Provisions) Act, 1958, as to the items which may be indebted to the housing revenue account without a Ministerial direction appear superfluous. Even in the cases of those authorities whose accounts are not subject to district audit, grant claims must be submitted to the auditor's scrutiny and, since the standard Government subsidies for housing have now been virtually abolished (only slum clearance and one-bedroom house subsidies being currently available), there would seem to be a case for relaxing the requirements of sch. 5, which were originally imposed when council house rents were statutorily subsidized from rates and taxes. It may well be that the Minister himself would welcome such a relaxation since, as things stand, his officers feel in duty bound to ask housing authorities for full and detailed particulars in support of applications to debit special items of expenditure to the housing revenue account and this requirement is probably as vexatious to the officials in Whitehall as it is to their opposite numbers at the council offices. The matter is one which might, perhaps, be discussed by the working party which is understood to be considering directions in which the Government may implement its expressed intention to accord a greater measure of freedom to the local authorities.

BLOOD IN OUR CATTLE MARKETS

By F. J. HORWILL

Recent analysis for the annual convictions for cruelty to animals in 1957 shows that of 1,000 offenders prosecuted by the R.S.P.C.A. one quarter were apprehended in cattle markets.

Much of the blame is due to the use of antiquated markets. Many are in need of structural alteration to cope with the ever-increasing amount of livestock passing through them. Gateless pens are being used to house cattle; often the animals break loose and drovers strike them unmercifully in the face to prevent their escape. In such scenes of turmoil the eyes of beasts have been knocked out.

During the height of the summer season pigs are housed in pens without cover from the sun for as long as 10 hours, during which time they scorch and have even died.

Scores of cattle markets in the country are without a suitable supply of water for thirsty travel-worn animals en route to the slaughter-house.

Poultry are exposed in open cages, their beaks gaping, gasping for protection from the blazing sun. In the winter they crouch in dejection from cruel winds because the pens in which they are housed for several hours are without protection.

Calves scarcely a few hours old are sent into markets for veal. Calves are often unable to walk properly and are subsequently prodded and shoved along into the selling pens. It is rare to see such light-weight animals being carried by drovers and dealers.

One farmer observed by an R.S.P.C.A. inspector was seen dragging a calf along by its ear, the animal's legs trailing helplessly behind it. Many pigs too are carried by their ears only into and out of cattle waggons.

Numerous farmers and cattle dealers use cattle markets as dumping grounds for unfit stock. Sheep have been sent in for slaughter lame on three legs with footrot. Cattle have been exposed for sale with ingrowing horns penetrating back into the animal's head. In a Suffolk market, an inspector of the R.S.P.C.A. saw an ewe with its eyes displaced by two ingrowing horns.

Everyday somewhere in the country's cattle markets cows with new born calves are sent into markets without being milked for as long as 18 hours. Any mother feeding her baby will testify to the agony such a lapse of time has on both mother and child.

The great obstacle the R.S.P.C.A. encounters in its efforts to improve markets is because the majority of markets are privately owned. An auctioneer owner of a market is not obliged by law to provide sheltered pens for animals. When representations have been made by R.S.P.C.A. inspectors for improvements, market owners have argued that the cost is too great, and since it does not affect the finance of buying and selling livestock, the market, bad as it might be, can carry on as it has done for many years in the past.

Cattle markets owned by city corporations are more co-operative to the pleas of humanitarians because these markets are supervized by a committee where suggestions are put to the vote.

It has therefore been necessary for various local branches of the R.S.P.C.A. to introduce minor improvements into

several markets out of their local funds. Such things as water troughs with inscriptions on them from the Society are not an uncommon sight in markets. Such improvements are limited by the amount of voluntary contributions made available to the Society.

By their representations, however, R.S.P.C.A. inspectors have succeeded in bringing great improvements into some markets. At Farnham the assembly pen has been railed off with the result that the animals can now enter it more easily with less beating from sticks. At Ashford, cover has been provided for pigs. At Pickering the market authorities have banned children from the market. At Guildford after two years of pleading by the local R.S.P.C.A. inspector, suitable boar pens have been erected. At Rotherham, after many pleas, the slippery pavement of the market has been made safe for cattle. Prior to this, every market day an animal was injured.

The Council of the R.S.P.C.A. is so gravely concerned about the state of many cattle markets that it has issued standing orders to all its inspectors, "Attendance at markets must take precedence over other duties."

The society has formed a special corps of men recruited entirely from former police officers with knowledge of local conditions. These men wear plain clothes but display an arm band with the society's initials on it, and specialize in attending markets. Such men are to be seen in Norwich, Hereford and Lincoln.

The society strives to educate people handling livestock by displaying posters in markets and public places. Their inspectors warn farmers and cattle dealers that unfit livestock must not be sent into the cattle market first before going for slaughter, such animals must go direct from the farm to the abbattoir as casualties. Farmers are loth to do this as it means they get a reduced price for the meat.

One cause of brutality to animals in markets is the very early opening of public houses in market towns. By midday, many drovers are under the influence of drink and are short tempered and free with the stick when moving cattle.

THE LITTER ACT, 1958

Since Mr. Rupert Speir's Bill received the Royal Assent on July 7 last year there has been no lack of evidence that it will be firmly enforced by magisterial benches in England and Wales and Scotland.

First in the field was the Chester bench on July 28, 1958, when a man was fined £2 for dropping a chips paper. The chairman of the magistrates said "We are pleased about the vigilance of the police in this matter. There are many complaints from residents that certain people have no respect for the condition of the streets they use themselves." Two pounds seems to be a standard penalty for the normal case of fish and chips paper and this sum has been inflicted by the Taverham, Bungay and Salisbury justices in similar circumstances within recent months. The most severe punishment seems to have been at Salisbury where a man was sentenced to six months' imprisonment for assaulting a policewoman and fined £10 for depositing litter on a highway (October 21, 1958). At Ongar (Essex) a few days later a fine of £8 was imposed for leaving by lorry a trail of old wireless sets and paint tins over an area of three-quarters of a mile. One of the most objectionable practices of this species is dropping litter from a motor vehicle and it is pleasing to know that successful prosecutions have taken place for this dangerous kind of offence at (*inter alia*) the following places:

Marlborough (September 4, 1958): Where a passenger in a motor car threw a paper out of the driver's window and was fined £1. He was stopped by a police car.

Chatham (October 4, 1958): Where a woman was fined £5 for a bottle thrown from a coach in the path of a police motor-cyclist (who had to swerve to avoid broken glass).

It is also good to be told that sea-side holiday makers will be protected from this dangerous and unsightly habit if the example of the Whitley Bay bench is followed. On October 18 last they fined two men £5 each for depositing broken bottles on the beach there.

The first prosecution to be instituted by a *local authority* was on October 25 last when the Romford R.D.C. took proceedings against a man for depositing rubble in a ditch. He was fined £2. In this connexion it is interesting to learn that the borough council at Barnet have decided to appoint an ex-police sergeant as anti-litter inspector, with a general responsibility for the protection of the council and public property. He will be mobile and uniformed. He will also be authorized to remind the public of laws and byelaws and to place information before the council for action. The county boroughs of Sunderland and Salford are also contemplating reinforcing the powers of their public health inspectors. There have, as well, been a number of statements by chief constables as to the more effective enforcement of the law.

It is timely to recall the terms of s. 1 of the Litter Act, 1958. This provides that:

"1. If any person throws down, drops or otherwise deposits in, into or from any place *in the open air* to which the public are entitled or permitted to have access without payment and leaves anything whatsoever in such circumstances as to cause contribute to, or tend to lead to, *the defacement by litter of any place in the open air*, then, unless that depositing and leaving was authorized by law or was done with the consent of the owner occupier or other person or authority having control of the place in or into which that thing was deposited, he shall be guilty of an offence and be liable on summary conviction to a fine not exceeding £10 . . ."

For the purposes of this subsection "any covered place open to the air on at least one side and available for public use shall be treated as being a place in the open air . . ." (s. 1 (1)).

On the wording of this section and the various authorities it appears clear that the prohibition it contains is absolute and that *mens rea* is not necessary to constitute the offence. The expression "place" is also susceptible of the widest interpretation which greatly rejnforces the effectiveness of the law.

For the practical purposes of enforcement it is obvious that a police officer or duly authorized and uniformed officer of a local authority who have the requisite powers are the best people to institute proceedings. In the great majority of cases the conscientious citizen would be at a disadvantage because he could not obtain the name and address of the offender and identification would, therefore, present difficulties. In

the case of an errant passenger or driver of a motor vehicle the case would, of course, be different as the index number of the vehicle would be an effective method of tracing him. The most sensible course open to the responsible member of the public is to report the matter at the most convenient police station together with all the information he has about the offence. The police will then investigate and if they think it appropriate will institute proceedings. This means that they will take all the necessary preliminary steps with a view to laying an information or summoning the defendant before the court.

These are described in the Magistrates' Courts Act, 1952, and set out in detail in *Stone*. They include (*inter alia*) the issue of a summons to the accused. The Act defines the jurisdiction of a magistrates' court and deals with offences committed on boundaries or on journeys and offences begun in one jurisdiction and completed in another. These are relatively complicated matters which are best left to the police and officials of the magistrates' clerk's office. In practice a complainant goes to the office of the clerk to the justices and they prepare the necessary papers prior to the hearing. All the complainant has to do is to attend to give evidence.

It is, however, of course, open in law to anyone to lay an information and a specimen illustration is set out hereafter: (*vide* s. 1, Magistrates' Courts Act, 1952, and rs. 4–14 of the Magistrates' Court Rules, 1952.)

In the [county] of —— petty sessional division of —— The information of CD of , who [upon oath [or affirmation]] states that AB of on the day of 19 , at , in the [county] aforesaid [or of] (stating particulars of offence *e.g.* deposited certain litter to wit a fish and chips paper contrary to s. 1 of the Litter Act, 1958).

Taken [and sworn [or affirmed]] before me this day of , 19 .

J.P.,
Justice of the Peace for the [county]
first above mentioned.

MOLE WORK

A correspondent in Huntingdon has read our articles at 122 J.P.N. 597 and 666 about untested evidence and informs us of a parallel instance where agricultural evidence was important. In the second of our articles last year we spoke of the proposed motor road from London to Birmingham, and of proposals relating to it which were affected by agricultural considerations. We remarked that, in the absence of evidence which could be tested by cross-examination, persons whose land was to be acquired were not fully informed of the case they had to meet. The proceedings then taking place were technically a " hearing " not an " inquiry," so that the Ministry of Agriculture, Fisheries, and Food were within the letter of the Franks Report, in not appearing to give evidence. The matter about which our present correspondent writes was an improvement of the Great North Road, and we gather that it was an inquiry in the full sense.

The site is in Bedfordshire, and separated by the River Ouse from Huntingdonshire; local authorities in Huntingdonshire are concerned because the proposed by-pass will interfere with land which serves their constituents for recreation. It has been decided by the Government that the Great North Road is to be improved, and the Minister of Transport and Civil Aviation, in whom it is vested under the Trunk Roads Act, 1936, proposes accordingly to construct a by-pass where the road passes through the village of Eaton Socon. Our correspondent tells us that two possible routes have been surveyed by the county council of Bedfordshire as agents for the Minister, and that particulars of both routes were made public at the local inquiry, which was held on two days in December, 1958. A route westward of the village is preferred by all the local authorities concerned, but the Minister had provisionally decided, subject to what was said at the inquiry, upon a route eastward of the village. It was stated at the inquiry by the divisional road engineer of the Ministry that this decision had been reached in deference to representations made on behalf of the Minister of Agriculture, Fisheries and Food. As at the inquiry, or hearing, to which we referred last year, this officer admitted that he was not in a position to explain the agricultural objection to the western route: he could only say that such an objection had been made.

The county council of Bedfordshire were represented at the inquiry, and their chief agricultural adviser was called as a witness. He did say that, speaking purely as an agriculturalist, he regarded the agricultural properties which would be interfered with (and at least two of them destroyed) by a road following the eastern route as being less important than those which would be cut through by the western route. He admitted, however, that the farms which the western route would cross were arable, so that there would not be the trouble which has arisen in some places of driving stock across a busy road. If gates were left on each side of the by-pass corresponding to a gap in the central reservation, a farm tractor could be moved from one part of the farm to another, on the comparatively few occasions when this was necessary, without danger or material interference with the traffic. The same witness put in figures showing that the total quantity of agricultural land which would be acquired for the by-pass would be some three acres more on the western route than on the eastern. But there was other evidence called by the local authorities concerned which showed that, if the eastern route were followed, not merely the small holdings which it would absorb but also a school playing field and public recreation ground would have to be replaced. This, according to the evidence, could only be done by taking other agricultural land, so that the net loss to agriculture would be a good deal greater, if the eastern route were followed.

It is fair to say that this evidence only came out at the public inquiry, and therefore it may not have been known to the Ministry of Agriculture, Fisheries and Food at the time when they advised the Ministry of Transport and Civil Aviation against the western route. It would, however, have been more satisfactory to the local authorities involved and to the inhabitants who objected to the eastern route if a witness from the Ministry of Agriculture, Fisheries and Food could have been asked whether he accepted the figures put in by the county council witnesses and, if he accepted them, whether he regarded the detriment to the farms which the western route would cross as being so serious that for agricultural reasons that route should be avoided, even if this meant a greater loss of agricultural acreage. Our local

correspondent tells us that, so far as is known in Huntingdonshire, the Minister of Transport and Civil Aviation is still considering the case. His decision cannot be foretold; indeed, our correspondent mentions that there were arguments on grounds of traffic, between the Minister's divisional engineering staff and professional witnesses called by the two county councils. A decision might therefore be reached one way or the other upon traffic grounds, apart altogether from the agricultural question. The point of general interest lies in this contrast: the traffic problems were thrashed out openly, in statements made by the Minister's own experts and the experts on the other side, at an inquiry conducted by an independent person, while the agricultural problems have to be settled at the headquarters of the Ministry of Transport and Civil Aviation upon information which has not been given to the public. Our local correspondent suggests that this sapping behind the scenes must undermine public belief in the inquiry, and that it is unfair to local authorities, who do not know what case they have to meet. We agree, and we add that it is unfair also to the Minister of Transport and Civil Aviation that he should be put in this invidious position.

BETTER PROVISIONS FOR MENTAL HEALTH

The Mental Health Bill facilitates treatment in hospital for mental diseases by removing the formalities which must under the present law be observed before mentally ill persons can receive treatment voluntarily, and by removing the statutory limitation of treatment of mental illness to designated or approved hospitals. The Royal Commission felt that the disadvantages of the present system were likely to be perpetuated under any system based on any rigid designation of hospitals, under which the categories of patient to be received in each type of hospital would be limited by law. It was accepted, however, that treatment for most of the patients suffering from mental disorder who needed in-patient treatment would continue to be provided in special psychiatric hospitals but that at the same time some forms of psychiatric treatment would be provided to an increasing extent in general hospitals which also treat other forms of illness. While this change is clearly sound in principle, it is to be hoped that it will not give rise to practical difficulties if there is a general shortage of hospital accommodation in any particular area, especially for elderly and long-stay patients. Even now there is great difficulty in obtaining the admission of such persons to hospital in some parts of the country. In replying to the debate on the second reading of the Bill in the House of Commons the Solicitor-General referred to questions which had been raised about the obligation of hospitals to accept patients. He said that it was the intention of the Minister that this burden should be placed on the regional hospital boards and that they should introduce arrangements to ensure in cases of urgency that a patient requiring psychiatric treatment should be admitted to the hospital best able to give him that treatment,

In accordance with the views of the Royal Commission many changes of terminology are introduced in the Bill. The term "mental defective" is no longer used, nor the terms "idiot," "imbecile," feeble-minded person," or "moral defective." The phrase "suffering from mental illness" is used instead of "person of unsound mind." The single term "mental disorder" is introduced to cover all forms of mental illness or disability. In providing in certain circumstances for compulsory detention and control four groups of mentally disordered patients are recognized—mentally ill, severely subnormal, subnormal, and psychopathic. The Royal Commission recommended three groups only but the Bill provides also for the "subnormal" as distinct from the "severely subnormal."

As desired by the Royal Commission it is anticipated that there will only be resort to compulsory admission to hospital in cases where this is clearly necessary in the interest of the patient or of the general community. Where compulsory admission is sought it will be necessary for the application to be made either by the nearest relative of the person or by a mental welfare officer of the local health authority. Except where admission is for not more than 28 days observation, the mental welfare officer is required to consult the nearest relative and may not proceed, except in emergency, if he objects. There is to be no reference to a justice as under present procedure but the position of the patient is safeguarded by his right to apply to a Mental Health Review Tribunal within six months after admission except when admitted only for observation.

A tribunal must be constituted for each Regional Hospital Board area for the purpose of dealing with applications and references by and in respect of patients under various provisions of the Bill. Each tribunal will consist of legal members, medical members and other persons with experience in administration or knowledge of social services. The chairman of the tribunal and of any group of members considering applications must be a legal member.

Local Authority Services

Throughout its report the Royal Commission were clearly anxious that local authorities should take an important part in providing services to prevent mentally disordered persons from requiring admission to hospital. It was anticipated this would be accomplished by providing for such persons in residential homes and by extending the arrangements for care and after-care under the National Health Service Act. It is generally accepted, for instance, that there are many elderly patients in mental hospitals who could be properly and more suitably accommodated in residential homes. The Royal Commission was of opinion that there was clearly a need for more residential accommodation of the type which should be provided by local authorities, for persons suffering from a degree of mental infirmity which is manageable in such a home and which does not require care or treatment under specialist medical supervision. It was thought that some would be suitable for general old people's homes but that it might be preferable for others to be in special homes. It was agreed that similar residential care was needed for elderly patients who have been in hospital and have reached the stage at which they would be discharged if they had relatives able to give them a home and a certain amount of supervision. The view was expressed that if their relatives were unable to do this, it should be the responsibility of the local authorities to provide accommodation to which patients could be discharged, either in homes owned by the local authorities themselves or by arrangements with voluntary societies, or in suitable cases by "boarding out" in private homes.

The Bill includes certain provisions which would facilitate such arrangements by enabling local authorities to provide for some mentally infirm or handicapped persons in the same homes or centres as other infirm or disabled persons, if this seems appropriate, as well as being able to provide special homes or centres for mental patients as a special group under the National Health Service. They will also be able to put mentally disordered children in homes provided under the Children Act when this is suitable, as well as providing residential homes or training centres under the National Health Service. The shift of emphasis from hospital to community care for mental patients which the Royal Commission recommended and the development of local authority services to this end does not depend on new powers conferred in the Bill. But it is made clear that all the services, including residential accommodation may be provided by local health authorities under the National Health Service Act.

Local authorities are, however, now experiencing difficulty in providing enough residential accommodation for those needing care and attention under the National Assistance Act. In this they have been handicapped by the difficulty to obtain the necessary Ministerial consents to capital expenditure. But even if such consents are more readily forthcoming it can hardly be expected, without some financial inducement by way of increased grants from the National Exchequer—for which there is no provision in the Bill—that local authorities will do much, at any rate in the near future, to provide residential accommodation for many of the elderly patients in mental hospitals or even to prevent others being so admitted.

In moving the second reading of the Bill the Minister of Health expressed the hope that in future people whose mental facilities decline in old age, and who cannot be cared for at home, will be increasingly accommodated in residential homes provided by local authorities. Some elderly patients are at present discharged from mental hospitals to local authority homes but the Minister said there was a need for many more places for this purpose. Further experience was needed to show the extent to which special homes are needed, and also to show the extent to which old people, whose mental confusion is not serious enough to require specialist treatment, should be, in general, in old people's homes.

The Royal Commission suggested that the aim of hospital treatment or training was to make the patient fit to return to life in the general community; and that patients should not be retained as hospital in-patients when they have reached the stage at which they could return home if they had reasonably good homes to go to.

Finance

The Royal Commission took the view that the provision of residential care at that stage becomes the responsibility of the local authority. These views were generally welcomed when the report was published, especially by those who are concerned with the welfare of the aged. But it is difficult to be optimistic that local authorities will, in fact, take action to the extent which would be necessary to achieve the aim so well expressed by the Royal Commission.

During the second reading debate Mrs. Braddock said the Royal Commission, of which she was a member, was very concerned about old people who had never had any mental illness before in their lives, but who, because there was nobody to look after them when they had become senile and needed treatment and attention, had to be certified. She thought the Government were at fault for not taking the recommendation of the Royal Commission that there should be a 75 *per cent.* grant to local authorities for a limited period for the purpose of establishing and extending their services and so provide for those who should not be in hospital.

Finance will inevitably be an important consideration to the local authorities when considering their responsibilities or rather their powers under the Bill. The Royal Commission assumed that a fair share of the national resources would be allocated in future to the mental health service both by the central government and by local authorities. They were satisfied that although many county and county borough councils are anxious to expand their services there was a real danger that others might be reluctant to acknowledge their full responsibilities particularly in regard to functions which since 1948 have been discharged by the hospitals and financed by the Exchequer. There is no indication, however, that any substantial increased expense is likely to fall on the Exchequer although it is quite clear that additional expense must fall on the local authorities. Clearly, without financial help from the Exchequer, within or outside the general grant Parliament could not make mandatory on local authorities the responsibility, as distinct from the power, to provide residential and community services. So it will be a matter for each local authority, no doubt influenced by local public opinion to decide the extent to which they should exercise their powers under the Bill when it becomes law. Some who are concerned at increasing the rates may well ask why they should do so at a saving to the Exchequer.

During the debate on the second reading of the Bill several members expressed regret that the Bill did not impose new duties on local health authorities to provide services for mentally disordered people. The Minister explained that the transitional provisions of part I of sch. 6 provide that it will be the duty of local authorities to provide under s. 28 of the National Health Service Act services similar to those which it has hitherto been their duty to provide under the Acts repealed by the Bill. The Minister was asked to include in the Bill a provision whereby local authorities would be required to submit to him their plans for developing their local health services. This point will no doubt be considered during the committee stage. On the effect of s. 28 the Minister said the powers under this section could be converted into duties at any time by a simple direction of the Minister and when the time comes, consideration would be given to doing so. This might be necessary but in principle he preferred voluntary to directed effort. He said that with the agreement of the local authority associations he would issue a circular shortly to local authorities indicating the ways in which their mental health services could be further developed.

NOTICES

A lecture on Civil Liberties in Europe by Norman S. Marsh, B.C.L., M.A., Fellow of University College, Oxford, at the London School of Economics and Political Science, Houghton Street, Aldwych, W.C.2, will be given at 5 *p.m.*, on Tuesday, March 10, 1959. The chair will be taken by Professor O. Kahn-Freund, LL.M., Dr.Jur., Professor of Law in the University of London. The lecture is addressed to students of the University of London and to others interested in the subject. Admission is free, without ticket.

On March 11, 1959, at 7.30 *p.m.*, the I.S.T.D. lecture, in the hall of St. George's Institute, Bowden Street, W.1, will be "Juvenile Courts: Future Developments in the English System," by Mr. E. P. Wallis-Jones, M.A., LL.B. Miss Gertrude Keir, M.A., will be in the chair.

WEEKLY NOTES OF CASES

COURT OF CRIMINAL APPEAL

(Before Lord Parker, C.J., Donovan and Ashworth, JJ.)

R. *v.* JONES

January 28, 1959

Criminal Law—Capital murder—"Murder done in course of theft"—Murder by burglar to effect escape—Homicide Act, 1957 (5 *and* 6 *Eliz.* 2, *c.* 11), *s.* 5 (1).

APPEAL against conviction.

The appellant was convicted at Leeds Assizes before Hinchcliffe, J., of capital murder and was sentenced to death. By s. 5 (1) of the Homicide Act, 1957, ". . . the following murders shall be capital murders, that is to say—(*a*) any murder done in the course or furtherance of theft." At about 9 *p.m.* on September 30, 1958, the appellant broke into a co-operative society shop. He went upstairs, where he knew there was a safe. To his surprise he found the safe open. He took silver and notes amounting to about £70 out of the safe and put it into his pockets. As he was about to descend the stairs, he heard the click of the front door and saw the lights go on. Mr. Turner, the manager of the store, had come back to lock up and shut the safe which he had left open. As Mr. Turner neared the top of the stairs the appellant struck him a fatal blow.

Held: following *Lord Advocate* v. *Graham,* (1958), Sc. L.T. 167, that, if a burglar was interrupted and killed a person to enable him to get away, the murder was "done in the course . . . of theft" within the meaning of s. 5 (1), and, therefore the conviction of the appellant of capital murder was right and the appeal must be dismissed.

Counsel: *Gillis, Q.C.,* and *Lionel H. Scott,* for the appellant; *Veale, Q.C.,* and *R. Withers Payne,* for the Crown.

Solicitors: *Registrar, Court of Criminal Appeal; Director of Public Prosecutions.*

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

QUEEN'S BENCH DIVISION

(Before Lord Parker, C.J., Donovan and Ashworth, J.J.)

FINE-FARE, LTD., *v.* BRIGHTON CORPORATION

January 28, 1959

Shop—Early closing—Mixed shop—Trade of many classes—Day fixed by local authority for one class of shop—Right to select another day—Shops Act, 1950 (14 *Geo.* 6, *c.* 28), *s.* 1 (2).

CASE STATED by Brighton justices.

Informations were preferred on behalf of the respondents, Brighton corporation, charging the appellants, Fine-Fare, Ltd., the owners of a mixed shop carrying on a trade of many classes, with failing to close their shop on Wednesday afternoons, contrary to the Brighton Weekly Half-Holiday (No. 2) Order, 1912, and other orders, which provided for Wednesday closing, and s. 1 (2) of the Shops Act, 1950. The orders were made under the Shops Act, 1912, but remained in force by virtue of s. 76 of the Act of 1950.

The appellants' shop was rated as a single hereditament, but had a number of different counters. Their main business was four-fold—grocers, greengrocers, fishmongers, and butchers. In addition and on a smaller scale they carried on other trades and businesses including those of hardware merchant, stationer, confectioner, baker, tobacconist, and seedsman. The local authority had made orders under the Shops Act, 1950, s. 1 (2), providing that grocers, greengrocers, fishmongers, and butchers should be closed on Wednesday afternoons. The appellants closed on Thursdays, the appropriate day for their other business.

By s. 1 (2) of the Shops Act, 1950, a local authority may fix "the weekly half-holiday" "for all shops, or may fix—(*a*) different days for different classes of shops . . ."

Held: adopting *Patrick Thompson, Ltd.* v. *Sommerville,* 1917, S.C. (J.) 3 and *Macdonald* v. *Groundland,* 1923, S.C. (J.) 28, where the local authority made an order that hairdressing shops were to be closed on a particular day of the week, and the defendants were the owners of a mixed shop where other businesses were carried on as well as hairdressing, and the Scottish Courts had held that the order did not apply to a mixed shop, that the same principle applied in the present case and the appeal must, therefore, be allowed and the convictions quashed.

Counsel: *Scarman, Q.C.,* and *Stable,* for the appellants; *Roger Parker,* for the respondent corporation.

Solicitors: *Royds, Rawstorne & Co.; Sharpe, Pritchard & Co.,* for Town Clerk, Brighton.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

WINTER *v.* HINCKLEY & DISTRICT CO-OPERATIVE SOCIETY, LTD.

January 28, 1959

Weights and Measures—Coal—Exposing for sale sacks with deficiency in weight—Weight correct when sacks left employers' premises—Subsequent theft by servant—Servant brought before court as "actual offender"—Weights and Measures Act, 1889 (52 *and* 53 *Vict., c.* 21), *s.* 29 (2)—*Sale of Food* (*Weights and Measures*) *Act,* 1926 (16 *and* 17 *Geo.* 5, *c.* 8), *s.* 12 (5).

CASE STATED by Leicestershire justices.

Informations were preferred at Market Bosworth magistrates' court by the appellant Winter, an inspector of weights and measures for the county of Leicester, charging the respondents, Hinckley and District Co-operative Society, Ltd., with exposing for sale sacks of coal which were of less weight than that represented by the sellers, contrary to s. 29 (2) of the Weights and Measures Act, 1889. On May 1, 1958, the respondents sent out sacks of coal on a lorry for sale in the street to whomsoever might want to buy it. The appellant stopped the lorry. There were then 39 sacks of coal on it. Each sack was labelled "112 *lbs.* coal." When weighed by the appellant, 33 of the sacks were found to contain less than 112 *lbs.* of coal. The deficiency varied between 11 and 22 *lbs.* per sack. When the sacks left the respondents' premises they each contained 112 *lbs.* of coal, but an employee named Cooper, who was in charge of the vehicle, thereafter stole coal from the sacks and thus produced the deficiencies in weight found by the appellant. The respondents, after being served with informations, availed themselves of s. 12 (5) of the Sale of Food (Weights and Measures) Act, 1926, and preferred informations against Cooper, alleging that they (the respondents) had used diligence to enforce the execution of the Act, that Cooper had committed the offence without their consent, connivance, or wilful default, and that he was the actual offender. All the informations were heard together by the justices.

Held: that, as the exposure for sale was the act of the respondents and not an independent act by Cooper, the servant, the appeal must be allowed and the case remitted to the justices with a direction to convict.

Counsel: *J. G. Jones,* for the appellant; *H. A. Skinner,* for the respondents.

Solicitors: *Kingsford, Dorman & Co.,* for *John A. Chatterton,* Leicester; *Thomas Flavell & Sons,* Hinckley.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

ADDITIONS TO COMMISSIONS

LINCOLN (HOLLAND) COUNTY

Mrs. Margaret Olwen Harrisson, The Old Vicarage, Holbeach Hurn, Spalding.

LONDON COUNTY

Robert Allen, Ranfurly, Priory Close, Chislehurst, Kent.

Mrs. Nellie McGregor, Far End, Wylde's Close, London, N.W.11.

Robert Samuel Marriott, 83 Wickham Road, Brockley, S.E.4.

Arthur Desmond Herne Plummer, T.D., 4 The Lane, Marlborough Place, St. John's Wood, N.W.8.

Mrs. Simone Edmee De Kerhor Rivington, 43 Abbey Road, St. John's Wood, N.W.8.

Ronald Bryson Stucke, 40 Broad Lawn, Eltham, S.E.9.

John Herbert Ward, Flat 1, 43 Englands Lane, N.W.3.

STAFFORD COUNTY

Thomas Bennion Boden, Denstone Hall Farm, Uttoxeter.

Ronald Edward Crisp, 105 Collingwood Drive, Pheasey Estate, Great Barr, Birmingham 22a.

Eric Benjamin Gibbons, Glynavon, Stream Road, Kingswinford, Dudley.

Major William Fowke, T.D., The Priory, Littleworth, nr. Hednesford.

Paul Kemp, High Onn Manor, Church Eaton, Stafford.

Mrs. Dorothy Leah Purcell, 54 Perry Street, Darlaston, South Staffs.

Frederick Vincent Turner, Morningside, Endon Road, Norton-in-the-Moors, Stoke-on-Trent.

CORRESPONDENCE

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

FEES FOR COMMITTAL WARRANTS

I read with interest your article at 122 J.P.N. 853.

Confining consideration of the above fees to criminal cases I should point out that in my experience it has not been the practice to charge such fees in cases of indictable offences dealt with summarily whether the defendant was committed for the offence or subsequently in default of payment of a fine. The reason for this lies in the wording of the second paragraph of part I of sch. 4 to the Magistrates' Courts Act, 1952, which expressly includes commitment in the 15*s.* fee thereby authorized.

Accepting the above as a logical interpretation of the schedule, one is left with the question whether or not commitment warrant fees can be charged in respect of summary offences. Clearly they can, for the wording of the third paragraph of the above schedule makes it apparent that the 4*s.* fee is in respect of "all the several duties . . . up to and including the conviction or dismissal of the charge" and the commitment is obviously a duty the performance of which is subsequent to conviction. It may interest you to know that I am borne out in this by the view expressed in 78 J.P.N. 506 *et seq.*—your journal's answer to the very first question on this point some four months after the passing of the Criminal Justice Administration Act, 1914, which as you know contained the first uniform scale of fees applicable throughout the country and the original of that scale with which we are still grappling today.

The trouble appears to be that the standard fee relative to summary offences (the 4*s.* fee) does not conform to the same fundamental pattern laid down in relation to the two standard fees in respect of indictable offences (the 15*s.* and 25*s.* fees). If the summary fee were made so to conform in that it also became an all-inclusive fee relative to each offence (and not offender) most of the difficulty would be alleviated in that the prosecutor would no longer be called upon to pay the obviously anomalous committal warrant fee as there would be no need to refer at all to the following individual scale fees set out in the schedule in that they would not be chargeable.

The Scale of Court Fees (Magistrates' Courts Act, 1952, *sch.* 4).

As indicated above the Criminal Justice Administration Act, 1914, is the source of much of the difficulty experienced in justices' clerk's offices throughout the country in assessing court fees. The sponsors of this Act apparently had in mind only to fix inclusive fees chargeable in relation to indictable cases, thus the 25*s.* and 15*s.* fees came into being. While the Bill was before the upper House their Lordships evolved the 4*s.* fee in respect of summary offences and their rather ambiguous amendment was in the Act when it finally gained the Royal Assent in July, 1914. Fortunately, the operation of the Act was delayed. In the meantime your newspaper was inundated by questions from anxious subscribers about the new scale of fees in general and the 4*s.* fee for summary offences in particular. The confusion was such that a gentleman from Newtown wrote to the Home Office about it. The published reply of the Secretary of State (78 J.P.N. 571) was hardly conclusive but it made your newspaper, which had been advising subscribers that the 4*s.* fee related only to "lock-up" charges (*i.e.*, persons arrested and held in custody), come down heavily on the other side with the opinion that this fee related to all summary offences. The Secretary of State finally restored some sort of equilibrium by his order of April 1, 1915, which amended the wording of the third paragraph of part I of the schedule to what is basically its present form.

Unfortunately, as indicated above, that form is fundamentally different in its conception than that of the two preceding paragraphs. The first paragraph, relating to the 25*s.* fee, refers to "every case . . ." and specifically sets out those fees which the substantive sum does not cover and what fees should be charged in the event of non-committal. The second paragraph, the 15*s.* fee, has reference to "any . . . offence . . ." and is all inclusive. The third paragraph, the 4*s.* fee, is in respect of "each defendant" charged with a summary offence and, as above mentioned, it is not all inclusive as it is limited to duties performed up to and including conviction or dismissal, so that for every duty performed subsequently the fees may be charged as set out under the various individual headings, *e.g.*, "Recognizance," "Order," "Warrant," etc., where applicable. The only exception that I know of was that any orders or recognizances under the Probation of Offenders Act, 1907, were expressly included in the 4*s.* charge.

To avoid the complexities of the scale many courts have adopted their own standard charges for fees due in various types of civil cases, *e.g.*, for adoption orders, matrimonial and affiliation orders and the like.

It seems ridiculous that clerks to justices should be subjected today to a badly drawn scale of court fees evolved 45 years ago somewhat thoughtlessly re-enacted in the Magistrates' Courts Act, 1952, without any attempt to give it more than a very minor face-lift. Quite obviously the whole question of court fees is long overdue for careful and enlightened scrutiny in the light of present day conditions and money values.

Yours faithfully,

D. H. KIDNER,
Second Assistant Clerk, Wallington P.S.D.

18 Stanley Park Road,
Wallington.

[We are obliged to our correspondent for his letter. We agree with what he says about the fee in the case of an indictable case dealt with summarily which attracts an inclusive fee of 15*s.*, including commitment.—*Ed., J.P. and L.G.R.*]

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

May I be permitted to refer to the editorial comment in the issue of the *Justice of the Peace* of January 24, under the heading of "Special Reasons for not Disqualifying."

The offences in question were dealt with by my bench and I observe that it is stated that the defendant was convicted of *driving* whilst under the influence of drink but this was not so, he being convicted for being in *charge.*"

Yours faithfully,

A. J. L. FERGUSON.

Justices' Clerk's Office,
High Street, Amersham, Bucks.

[We are much obliged. For our earlier Note of the Week we had to rely upon the report before us: from inquiries made of the managing editor of the newspaper from which we took the account, we understand that the first two editions of his newspaper contained a perfectly correct account of the convictions recorded but that for an unaccountable reason (unaccountable due to the departure of the sub-editor responsible) the wording was altered in the third edition to the form on which our note was based.—*Ed., J.P. and L.G.R.*]

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

JUSTICE OF THE PEACE—JANUARY 31, 1959

I have to refer to your article on p. 67 regarding the recruitment of junior staff.

I confirm that your correspondent seems to have misunderstood the position as to my taking an articled clerk each year.

The council's decision was in two parts. First that if possible they would recruit one suitable person each year from the grammar school into the council's service. Secondly, they gave approval to the payment of one articled clerk in my office on the higher general division.

It will be appreciated that these are two separate matters, though it could of course happen that a person recruited under the first head may be considered suitable to become articled.

So far as the penultimate paragraph of your letter is concerned, I think it only fair to say that I know of other non-county boroughs who are already operating this method of recruitment.

Yours faithfully,

F. G. E. BOYS,
Town Clerk.

Municipal Buildings, Banbury.

THE WEEK IN PARLIAMENT

From J. W. Murray, Our Lobby Correspondent

A Standing Committee of the House of Commons has begun consideration of the Street Offences Bill.

On cl. 1 (Loitering Or Soliciting For Purposes Of Prostitution), Mr. Anthony Greenwood (Rossendale) moved an amendment to leave out the words "a common prostitute" and to make the first subsection read: "It shall be an offence for any person to loiter or solicit in a street or public place for the purpose of prostitution to the annoyance of any inhabitant, occupier of non-residential premises, or passenger."

He said that the amendment served two purposes. First, it removed any prejudice that might be created by the retention of the term "common prostitute." Secondly, it got rid of the double standard, or the unequal standard between men and women, and equated the law for the two sexes. He believed that the double standard—the retention of one law for men and another for women—was inherently wicked and hypocritical.

There were more men who patronised prostitutes than women who were prepared to cater for them. Everyone knew perfectly well the approaches that would be made to any personable young woman who walked alone along Coventry Street or in Leicester Square during the evening hours. He knew that even in Hampstead, which was a comparatively respectable suburb of London, his own 15½ year old daughter could not walk down the High Street at night without receiving the attentions of men in motor cars. It was a very serious problem. He believed that a state of affairs in which women and girls could not walk round the streets in safety was far more objectionable than the situation created by the more discreet behaviour of obvious prostitutes in a number of fairly well-defined and limited areas. But it was against the women that the Government were proposing to act. The Government were not proposing to do anything about the kerb-crawlers, nor the men who hung around trying to pick up women and girls; nor were they proposing to proceed against the men who made it possible for prostitutes to earn a living. It was sheer humbug to talk of cleaning the streets if, by that, they only meant clearing the women from them and not taking action against the men who were equally, or possibly, more to blame than the women.

He objected to the retention of the term "common prostitute." As he understood it, the condition of being a common prostitute was to be regarded as established even when there had been no previous conviction, because subs. (2) provided the penalty of a fine for a first offence. But, in any event, the fact that a woman had once been a common prostitute was no proof that she still was, and if any hope of redeeming those women were to be abandoned he thought the prospects for the future were bleak indeed. If that provision remained, it would be tempting for the zealous policeman to pull in a woman whom he knew to be a prostitute, especially if the need to prove annoyance were dispensed with.

In the Second Reading debate, the Home Secretary made rather cryptic references to a system of cautioning that he proposed to introduce, or perpetuate. He (Mr. Greenwood) believed that the proposal to administer cautions might well make the position more serious, and constitute a further threat to the liberty of the subject, because it appeared that cautions were to be administered, presumably by the police, without evidence being heard, without any right to legal representation, and without the rules of evidence being observed, and, if the caution were administered in the street, with the policeman himself filling the rôle of both judge and jury. If it were to be in a police station then, presumably, the station sergeant or, perhaps, the inspector, would play the part of judge and jury. It seemed to him that by that perilous and almost totalitarian procedure, a woman could be branded for life as a common prostitute, with her name listed in every police station throughout the United Kingdom. That was a proposal which should be viewed with very grave apprehension indeed. The present wording in the Bill constituted a monstrous, dangerous and unjust provision.

Opposing the amendment, Mr. R. T. Paget (Northampton) said that the idea that by removing the words "common prostitute" one could bring in every man who was going for a stroll in the street, perhaps in the hope of meeting a girl, was certainly something that he had not realized, and the perils and dangers of miscarriage of justice and blackmail that would thereby be introduced were quite terrifying. Everyone was in some measure, familiar with the dreadful consequences when a man, in any position in public life, who happened to be of homosexual temperament, chanced to talk to a boy in a lavatory. To extend that sort of peril to the whole of the heterosexual population as well, was something to which he certainly would not wish to be a party.

There was a really formidable protection for the person accused of being a common prostitute. He gave an example of a case which he had heard in court. It was the only occasion upon which he had heard the charge of being a common prostitute challenged. The girl first said to the policeman, "Have you seen me in the street for the last fortnight?" The policeman said that he had not. Then she said to the magistrate, "You have not seen me here for the last six or nine months, have you?" He forgot precisely what the period was. She said that she had a job and had come off the streets, adding, "I occasionally borrow a flat from a friend and go out for a night. You cannot call that being a common prostitute." The magistrate had agreed and the case was dismissed. He did not know whether every magistrate would take that view, but his impression certainly was that magistrates did construe those words rather strictly and would not find a woman a common prostitute unless they were satisfied that it was her substantial means of living.

There was a very great danger indeed in removing words which provided a formidable bar against miscarriages of justice and the conviction of innocent women. In the absence of those words, he believed there would be very real danger to the ordinary woman who happened to be walking on the streets.

Sir Hugh Linstead (Putney) said that one of the problems faced by the Wolfenden Committee had been how one should equate or balance the conflicting claims of public decency, on the one hand, and justice to the prostitute, on the other. They had more difficulty in coming to their conclusions on that than on almost any other problem with which they had to deal. He had finally come to the conclusion that it was impossible to strike a fair balance.

In fact, one could not meet the claims of public decency and at the same time do justice to the prostitute as a woman and as a citizen. Parliament had to face that fact once again as it had to face it in the past and must decide which was the more important, leaving the woman with the full claims and rights of a citizen, on the one hand, or providing for what was called cleaning the streets. It was not the woman who was to blame. It was not really the man who went with her who was to blame. It was the structure of our society and our own domestic morality which was basically to blame for the existence of prostitution.

The man seeking a woman was at present dealt with under the law. There were provisions in the law which were quite adequate, provided enforcement was there, to deal both with the man who spoke to the ordinary passer-by in the street and the man who kerb-crawled in a car. The law was there. Enforcement might be very difficult, but it was only a matter of enforcement. Therefore, because the actual position of the man was different from the position of the woman in the streets, he did not believe that the substitution of "person" for "common prostitute" would be desirable.

He thought that they wanted to see the caution retained. They did not want young girls picked up for the first time and brought straight to the police court. They wanted such a person, if possible, to be handed over to the care of a society, or, even better, sent back to her family, which was the sort of thing that happened now. If the caution were to remain and if the first charge against a young prostitute when the time came that she had to be charged was not to be for loitering for the purposes of prostitution, so that she was not branded, then a magistrate, with someone before him on the charge of loitering for the purposes of prostitution, would know that she had already been cautioned twice and had already had another charge of the same type brought against her. For both those reasons, he did not think that there would be any loss of justice if a woman was charged as a common prostitute. The magistrate in any case knew that she had a record behind her, whether that be a wise thing or not.

Sir Frank Soskice (Newport), supporting the amendment, said that the administration of justice was more important than the elimination of almost any kind of nuisance.

Under subs. (2) a woman who had been twice convicted could be sent to prison for three months, as well as being fined. That

was a serious penalty. Was she really going to get a fair trial if she disputed that she solicited? Take the case of a woman who had been twice convicted—and was therefore liable to a penalty of three months' imprisonment in the event of further conviction—who was brought before a magistrate upon a charge of having again solicited. As the law was now administered, many of those cases were not contested, because the penalty was small, but if the penalty were made a very heavy one there would be many defended cases.

He asked the Attorney-General what he thought of the situation of a woman who had been twice convicted and had, as a result of the serious penalties to which she had become subject, desisted and made up her mind not to commit further offences, but was mistakenly thought by police officers to have transgressed again. That was a matter upon which police officers might be mistaken. If she were brought before a magistrate by a police officer who accused her of again having committed the offence of soliciting, did the Attorney-General think that she would inevitably get a fair run, bearing in mind that she would be brought before the magistrate as a person who, by the very designation of the offence with which she was charged, was known to be a prostitute, and known to be a person who solicited?

He believed that the system of cautions was extremely dangerous, and he disliked the idea of it altogether. He would like to think that a person charged with soliciting would be brought before a magistrate who knew nothing about her; who did not know whether or not she had a criminal record, or had been convicted of any offence, so that she would come before him with the same presumption of innocence as would any other citizen coming before a court of law. If the Bill became law, if a person who might genuinely have sought to give up the life of prostitution were charged with soliciting, a police court magistrate before whom she was brought would have to ask himself "This woman either is a common prostitute, or there are grounds upon which responsible police officers propose to come before me and say that she is a common prostitute. She is now charged with soliciting, and I have to say, looking at the whole circumstances, whether or not it is likely that she did solicit. The police officers say that she did, and she says that she did not. I have to decide between the two." In such a situation was he going to be able to give the same weight to the presumption in her favour that he would in the case of any other ordinary citizen charged with an offence?

He knew that police court magistrates had most difficult tasks to discharge, and could be relied upon to do their level best in the circumstances, and that the same could be said of the police officers. But it was putting upon a police court magistrate a most unfair burden to expect him to try a case of that sort. He had to do justice both to prosecution and defence, and to bring a matter before him which was weighted in that way was most unfair to him, besides being unfair to the citizen.

The Attorney-General, replying to Sir Frank, said that he had asked: "Will the woman charged with an offence under subs. (1) get a fair trial?" He could not see any reason why she should not. After all, for a very long time, the offence had been one that contained the ingredient of establishing that the woman belonged to a particular occupation, namely, that of a common prostitute. The Bill made no change in that respect, and he had no reason to suppose that where guilt was disputed on that charge under the existing law there was any absence of a fair trial.

The Government thought it essential to retain the words "common prostitute." The object of the Bill was to deal with a particular nuisance that was well established and well recognized, and the persons who were responsible for the nuisance, and who created it fell into one category and one only; namely, persons who carried on the trade of common prostitutes. They were the persons who were haunting the streets, and creating a public scandal.

It was not the hordes of customers standing about that created the scandal. As far as he was aware, the customers did not loiter or solicit among people, and they certainly did not loiter or solicit for the purpose of prostitution, and offering their bodies for the purpose of acts of lewdness. It was not the customers who were creating the nuisance at the present time.

The other reason why they regarded it as absolutely essential to retain the phrase "common prostitute" was the safeguard that it gave to the respectable woman. If they put in the words "any person," it would endanger any respectable woman. If they took out the term "common prostitute" they were so enlarging the scope of the Bill that any woman who was seen loitering in circumstances that might lead the police to think that she was loitering for a particular purpose, would be imperilled. It was not the intention of the Government to make the Bill of such vast scope as that.

He went on to say that they were not trying to make prostitution of itself a crime. What they were saying was that the situation had so deteriorated in certain parts of the great cities, and, perhaps, elsewhere, too, that the law really did require to be strengthened so as to prevent what was, by common acceptance, a very serious nuisance and a real scandal. The Bill was designed solely for that purpose. It was not a morality Bill. It was a Bill designed to clear the streets. In his view, it was essential for that purpose that the persons at whom it was aimed should be the common prostitutes and no one else.

The debate on the amendment continues.

PERSONALIA

APPOINTMENTS

Mr. G. C. Child, LL.B., at present assistant solicitor to Oxford city council, has been appointed assistant solicitor to the county borough of Brighton. The former occupant of the post, Mr. E. C. Woods, is no longer in the local government service.

Police Superintendent C. W. Phillips, who has been in charge of the Lewes division of the East Sussex police force since January, 1955, has been appointed commandant of the Home Office police training college at Folkestone. This will not be the first time that Supt. Phillips has been associated with police training. From 1946 to 1950 he was senior instructor at No. 6 District Police Training School at Sandgate. In his new appointment he succeeds Mr. David Brown, who has been appointed chief constable of Hastings.

The following whole-time probation officers have been appointed to serve the London probation area, as from the dates given: Mr. W. G. M. Lugton (November 24); Miss A. L. Kramer (November 24); Mrs. C. P. Martin (December 19); Miss B. Abraham (January 1); Mr. C. H. Newlove (January 1) and Miss V. Lyons (January 5).

Miss Teresa Browne has been appointed as probation officer for the county of Durham and assigned to the Darlington county borough and Darlington county petty sessional division in place of Miss M. Spencer, who has resigned. Miss Browne will work from the Probation Office, 157 Northgate, Darlington. She is 28 years of age.

RETIREMENTS AND RESIGNATIONS

Chief Superintendent Frank William Kitchener, head of "B" division of the Bedfordshire constabulary, retired on January 31, last. He was succeeded by Superintendent E. P. Palmer, who was promoted chief superintendent. Mr. Kitchener rose through the ranks to become head of "B" division, the largest in the county, with H.Q. at Bedford. He joined the old county force in 1919, following service in the first world war and after serving at various stations throughout the county, was promoted to sergeant in 1933, on moving to Dunstable. Prior to the second world war, he was concerned with the establishment of the C.I.D. in Bedfordshire. He was the first member of the force to undertake the first C.I.D. officers' course at Hendon Police College. The C.I.D. remained under Mr. Kitchener's guidance until July, 1940, when he was promoted superintendent to take charge of the Kempston division of Bedfordshire. It was in 1947 that he was appointed chief of "B" division, following the merger of the borough of Bedford and the county of Bedfordshire forces. He became the first chief superintendent in the county, when he was promoted to that rank in 1954 and in the same year he was rewarded with the Queen's Police Medal for long and meritorious service, in the Birthday Honours.

Mr. Arthur Smales, deputy town clerk of Barnsley, has resigned from that position owing to permanent ill-health. Mr. Clifford Race, chief assistant solicitor in the town clerk's department, has been appointed to succeed Mr. Smales as deputy town clerk.

OBITUARY

Mr. James Morton, clerk of Wortley, West Riding of Yorkshire, rural district council, for 36 years until his retirement in 1947, has died at the age of 80. Mr. Morton was admitted in 1901, passing his finals with honours, and being awarded the Bradford Law Students Society's prize for highest marks. Mr. Morton entered local government in December, 1908, and was first appointed as assistant solicitor to Sheffield corporation. He was appointed clerk to Wortley rural district council in February, 1911.

SPINNING A YARN

The newly-instituted Restrictive Practices Court has spent a considerable time hearing evidence and legal argument before coming to the conclusion that the minimum price scheme contained in the Yarn Spinners' Agreement must be declared contrary to the public interest; and a list of unenforceable restrictions has been agreed by the Yarn Spinners' Association which is being embodied in the Court Order. Thus, as counsel told the Court at its hearing, the practical effect would be that the Yarn Spinners' restrictions had come completely to an end.

Spinning, weaving and knitting are all very different processes, though they are apt to be mixed up in the masculine mind. For some reason or other they have all been associated for centuries with the activities of women; the cause is not far to seek. In primitive times the two primary needs of human beings were the provision of food and the supply of covering of some sort for the body; the former was the duty of the men of the tribe who (when they were not fighting among themselves or attacking other communities) engaged chiefly in hunting animals or catching fish for food. The women, left at home, busied themselves, much as they do now, with domestic pursuits, one of the most important of which was the making of clothes for their menfolk and themselves.

The craft of spinning, as everybody knows, consists in the forming of threads by drawing out and twisting various fibres. It is the first stage in clothes-making, and is of great antiquity and widely diffused among the races of mankind. Strangely enough, the art remained almost entirely primitive until the industrial revolution. The notched spindle continued, in most parts of the world, to be rotated by hand, the distaff of wool being held under the left arm. Leonardo da Vinci, in the fifteenth century, invented a "flyer," to twist the yarn mechanically before winding it upon a bobbin, together with a device for moving the bobbin up and down the spindle so as to effect an even distribution of the yarn. But it was not until the eighteenth century that mechanical methods came into general use, chiefly associated with the name of Richard Arkwright. It was a decision of the Court of King's Bench, in 1785, after lengthy litigation, that made Arkwright's machinery available for public use.

The process of weaving may be described as interlacing, at right angles, two or more series of flexible materials—the warp and the weft. We read, quite early in history, of the use of the loom; examples of weaving have been recovered from ancient Egyptian tombs, and Penelope, in the *Odyssey*, kept her suitors at bay by declaring that she must first finish a robe for her father-in-law, Laertes—a task of weaving which she worked at during the day and unpicked every night. The hand-loom was in use until the eighteenth century; apart from ordinary clothing, wonderful tapestries were produced by this means in mediaeval times and up to the Baroque Age, particularly in Paris, at the Gobelins works, in Brussels and in various parts of Flanders. John Kay, in 1733, was the pioneer in mechanical inventions, and a little later the Jacquard machine came into general use. The power-loom was devised by Edmund Cartwright in 1792, and after many vicissitudes the craft grew into the great textile industry as we know it today.

Knitting is the art of forming a single thread or strand of yarn into a texture of loop structure, by the use of needles. Although frame-work knitting is a great industry, hand-knitting is still an important domestic art. One need do no more than glance at the illustrated press, or the women's journals, to see how large a part hand-knitting still plays among women in the home. We have never tried it ourselves, but it is said to be a first-class sedative for jaded nerves; and one of its great advantages is that the hands can go on working the needles without the necessity for any close concentration which might prevent the operator from watching the children or the television, or listening to and taking part in the conversation of her family and friends. Knitting does not seem to boast quite the respectable antiquity of spinning and weaving; but it is essentially a sociable and soothing occupation. The Duke Orsino, in *Twelfth Night*, noted these two characteristics of the art long before the days of radio:

> "O fellow, come, the song we had last night.
> Mark it, Cesario, it is old and plain;
> The spinsters and the knitters in the sun
> And the free maids that weave their thread with bones
> Do use to chant it."

Thomas Hardy, in *The Dynasts*, talks of

> "A knitter drowsed,
> Whose fingers play in skilled unmindfulness."

Readers of *A Tale of Two Cities* will remember Charles Dickens's picture of the knitting women, presided over by Madame Defarge, who sat and watched, while they worked, the sinister rise and fall of the guillotine, which never put them for a moment off their task.

With these important precedents before them, it is odd that the women's sections of the eastern area of the British Legion should have recently passed a resolution to the effect that knitting at all conferences shall be banned. The resolution observed that the practice prevents delegates from concentrating on their notes; and the proposer alleged that the clicking of knitting-needles drew attention from speeches. "We have even," she said, "had knitting from the platform." This is a curious complaint, since all the evidence goes to indicate that knitting does not distract attention from the matter under discussion; we doubt if it is even forbidden by the Standing Orders of the House of Commons. If the supporters of the resolution persist in their attitude, the controversy may provide fresh matter for the Restrictive Practices Court. Most women, we are convinced, would say that the restriction is contrary to the public interest.

A.L.P.

BOOKS AND PAPERS RECEIVED

(The inclusion in this feature of any book or paper received does not preclude its possible subsequent review or notice elsewhere in this journal.)

Housing Management. Rosemary J. Rowles. Pitman, 35*s*.

The Irish Election System. What it is and how it works. Pall Mall Press. 3*s*. 6*d*.

Principles of Local Government Law. C. A. Cross. Sweet & Maxwell, Ltd. 35*s*.

Archbold's Pleading, Evidence and Practice in Criminal Cases. Thirty-fourth edn. T. R. Fitzwalter Butler and Marston Garsia. Sweet & Maxwell, Ltd. Price £5 5*s*.

Advanced Cost Accountancy. J. E. Smith and J. C. W. Day. Gee & Co. (Publishers) Ltd. Price 21*s*. net.

Stamp Duties. Supplement to 2nd edn. F. Nyland. Butterworth & Co (Publishers) Ltd. Price 6*s*. Combined price 27*s*. 6*d*.

Powers of Arrest and Charges. By F. Calvert. Second edition. Butterworth & Co. (Publishers) Ltd. Price 7*s*. 6*d*. net.

Potter's Outlines of English Legal History. Fifth edition. By A. K. R. Kiralfy. Sweet & Maxwell, Ltd. Price 25*s*.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Gaming—*Small Lotteries and Gaming Act*, 1956, *s.* 4—*Advertising entertainment.*

Several questions are being raised on the legality of advertising entertainments at which games of chance or games of chance and skill combined are being played for purposes other than for private gain under s. 4 of the Small Lotteries and Gaming Act, 1956.

First, there does not appear to be any definition of the word "entertainment" in relation to s. 4 of the Act similar to the definition in s. 23 of the Betting and Lotteries Act, 1934 (which is limited to that section) although by s. 5 of the 1956 Act, ss. 1 and 4 are incorporated in the 1934 Act following s. 22. Can the promoters therefore advertise the entertainment as being one at which the games of chance or games of chance and skill combined are being played, such as tombola, etc., assuming that the proceeds are not for private gain, particularly in view of the fact that s. 4 (3) states that such games are not to be deemed as unlawful lotteries and there would appear to be no offence committed under s. 22 of the 1934 Act.

Secondly, in view of the fact that s. 4 (3) declares the games not to be unlawful lotteries, can societies registered under s. 2 promote such games as lotteries, the proceeds to be for the purpose of the society under the conditions laid down in s. 1.

H.R.D.C.

Answer.

1. It would seem, as our correspondent suggests, that since by s. 4 (3) of the 1956 Act a game played at an entertainment conforming to the conditions in s. 4 (1), is not to be deemed an unlawful lottery, the proviso contained in s. 22 (2) of the 1934 Act applies and that it is legal to advertise such an entertainment.

2. We think that a society registered under s. 2 of the 1956 Act could promote such a game as a small lottery, provided the game were susceptible of conforming to the conditions in s. 1 (2) of the 1956 Act. If that is possible, then the question of advertisement would be governed by the provisions of that sub-section.

2.—Housing Act, 1957, s. 60 and sch. 2—*Payments in respect of well-maintained houses—Works of improvement.*

The Minister has given a direction for the making of a payment to an occupier who, under his tenancy agreement, is liable "to carry out all interior and exterior repairs and decorations." In a statement of aggregate expenditure (para. 2 (1) (*a*) of sch. 2 to the Act) the occupier included the cost of (*a*) connecting the house to the main supply of electricity, wiring and providing electrical fittings and (*b*) connecting to main water supply and fitting a sink. In the absence of any definition of "good maintenance" for the purpose of s. 60, and with improvement grants under the Housing Act, 1949, in mind where the converse applies in distinguishing between improvements and repairs (except repairs incidental to the improvements), please advise whether expenditure incurred by the occupier for items (*a*) and (*b*) above can be included in the well-maintained payment, and, if not, whether such items could be included if the landlord had been the claimant (applications in the latter class have been received).

DOTTO.

Answer.

Seeing that s. 60 (2) (*b*) speaks of maintenance as well as repair, we think it is legitimate to include some payments going beyond repair. We doubt whether precise delimitation is possible. In the case before us, we think installation of piped water and a sink (which might have been required under the Public Health Act, 1936) can fairly be treated as work of maintenance. The occupier is not, it seems, liable for it under his agreement here, but *see* the proviso to the subsection. We do not think installation of electricity would be spoken of as maintenance, in ordinary language, and we would exclude this.

3.—Housing Act, 1957, s. 104—*Control of rents on the sale of council house.*

Some years ago, under the terms of the Minister of Housing and Local Government's general consent to the sale of council houses, a council house was sold and in accordance with the terms of the consent a covenant was included in the conveyance, fixing a controlled selling price and a controlled rental. The conveyance also contained the usual covenant giving the local authority the right of pre-emption in the event of a proposed sale or letting of the house. These covenants were expressed to be in force for a period of five years from the date of the conveyance.

It has now been discovered that the owner of the house, to whom it was originally sold by the local authority, is not in possession and is about to grant a furnished tenancy of the premises to a third party. Quite apart from the right of pre-emption which will arise, I shall be glad to have your views on whether the owner will be committing any breach of the covenant relating to the controlled rental if, in fact, it is let furnished at a higher rent. The original figure for the controlled rental fixed by the local authority has, of course, now been superseded by the rent limit under the 1957 Act, but nevertheless the proposed furnished rental exceeds that figure. The rent limit of the 1957 Act was, of course, made to apply to lettings of unfurnished property, but in view of the general terms of the covenant which prohibit a letting beyond a certain rent, it is my opinion that a furnished letting above that figure would constitute a breach of the covenant, and leave the owner open to summary proceedings under the 1957 Act.

P. IRISH.

Answer.

The rent limit is that now provided by s. 20 of the Rent Act, 1957, which relates the rent to the limit in s. 1 of that Act, which provides for furnished lettings. A furnished letting will not, therefore, be in breach of the covenant if it does not exceed the limit provided by that section.

4.—Husband and Wife—*Persistent cruelty—Particulars of acts alleged.*

A wife lays a complaint for maintenance on the ground that "on a specified day and on divers dates prior thereto the husband has been guilty of persistent cruelty towards her." The husband's solicitors ask the other side for further and better particulars of the instances of persistent cruelty, which are refused.

Application is made to the bench to order further and better particulars. The bench direct that whilst they have no power to make a formal order for further and better particulars, they will, unless same are supplied before the hearing, grant an adjournment to the respondent, as of right, on the conclusion of the complainant's evidence in chief, and grant costs up to that time to the respondent in any event.

Is this a reasonable procedure, in proper cases, where matrimonial offences other than adultery are alleged? It is appreciated that where adultery is relied on, strict and detailed particulars must be supplied. Is it not reasonable that in the case of other alleged matrimonial offences the respondent shall, if he so requests, be supplied with particulars of allegations which, whilst not necessarily so precise and detailed as in the case of adultery, are sufficient to inform him of the substance of the case he has to meet (on the analogy of *Sullivan* v. *Sullivan* (1956) 120 J.P. 161; [1956] 1 All E.R. 611).

GOTTO.

Answer.

This question was touched on in a P.P. at 120 J.P.N. 780. We adhere to what we said there and we would respectfully suggest that the justices' action in this case went beyond their powers. They have impliedly agreed that such particulars must be supplied and, in our view, all that the respondent can do is to apply for an adjournment if he claims he has been taken by surprise by the evidence. This must happen very rarely unless the wife is basing her case on imagination rather than fact.

Adultery and a reasonable belief in adultery are in a special category and we do not think that what was said in *Sullivan* v. *Sullivan, supra,* a case dealing with reasonable belief in adultery, should be extended to other grounds of complaint without a categorical direction from the High Court.

5.—Land—*Compulsory acquisition—Owner unknown.*

A local authority in 1956 declared a clearance area, and made a clearance order in respect thereof under s. 25 of the Housing Act, 1936. Later they made an order for the compulsory purchase of the properties comprised in the clearance area, under s. 29 of that Act.

One such property is occupied under a monthly or weekly tenancy, but the local authority have been unable to trace the identity and whereabouts of the present owner, and for some time past the tenant has been paying no rent because the landlord is unknown.

The local authority now wishes to proceed with the purchase of this property, and the district valuer has given his estimate of the cost of acquisition on the basis of the Town and Country Planning Acts, 1947 and 1954, and the Housing Act, 1957, s. 59. Nevertheless it appears that the local authority must proceed in accordance with s. 58 of the Lands Clauses Consolidation Act, 1845, and when the compensation has been assessed by the surveyor appointed by two justices thereunder the local authority will have to proceed to deposit such amount in the bank under the provisions of s. 76 of that Act. I find no reference to s. 58 in *Stone*, but do you agree that this is the procedure for the local authority to adopt in these circumstances ?

PELON.

Answer.

We agree. Section 58 used to be mentioned in *Stone*, but *see* now ss. 1 (6) and 3 (2) of the Lands Tribunal Act, 1949.

6.—Land—*Covenant—Land held as a public open space.*

Some 13 years ago a piece of land was given to the local council "in fee simple for the purpose of a public open space and for recreational purposes if needed in the future." The deed of gift contained no covenant by the council. Is the council prevented by the terms of the deed of gift from selling the land for residential development ?

CAYAR.

Answer.

The absence of a covenant by the council would afford an answer if the proposed sale of the land was attacked by the donor or a person claiming under him. It would not afford a complete answer if the proposal was attacked in a relator action through the Attorney-General, on the ground that the public had acquired rights over the land. Since this was given to the council 13 years ago, we assume that it will have been open to the public in the meantime as a public open space. In *A.-G.* v. *Bradford Corporation* (1911) 75 J.P. 553 the corporation were held to be entitled to dispose of a piece of land which had been acquired for purposes of a public park, but not taken into use as such. In *A.-G.* v. *Westminster City Council* (1924) 88 J.P. 145 the defendants were held not to be entitled to convert to other purposes a building which had been made available to the public as a library. It is, however, in the discretion of the court whether to grant an injunction, and it may be that nobody will apply for an injunction here or that the court would refuse it. The council cannot sell the land without the consent of the Minister of Housing and Local Government, under s. 165 of the Local Government Act, 1933, and consent will still be needed if part II of the Town and Country Planning Bill passes into law in its present form. If the Minister gave consent to the sale he would be likely to make it a condition that the purchase money be used for acquiring other land as an open space, and it would be unlikely that the transaction could be attacked successfully in a relator action.

7.—Private Street Works—*Street partly repairable already.*

In the answer given to P.P. 2 at 122 J.P.N. 811 you appear to have overlooked the provision at the end of s. 150 of the Public Health Act, 1875, as follows: "The same powers may be exercised in respect of any street or road of which a part is or may be a public footpath or repairable by the inhabitants at large as fully as if the whole of such street or road was a highway not repairable by the inhabitants at large," and the case of *Evans* v. *Newport Urban Sanitary Authority* (1889) 57 J.P. 374, which held that the authority was entitled to claim the cost of making up the whole of the highway concerned from the frontagers notwithstanding that it was an old repairable footpath which had been added to on each side.

PORFEL.

Answer.

The last enactment in s. 150 of the Public Health Act, 1875, was not overlooked. In our opinion it does not apply. The word "street" in the section excludes a street repairable by the inhabitants at large but, if part only of the street is so repairable, the section may be applied by virtue of the last enactment: that is the repairable and non-repairable parts may be treated as one street. This would not, however, entitle the local authority to express dissatisfaction with the part repairable by them; *see Maude* v. *Baildon Local Board* (1883) 47 J.P. 644 *per* Pollock, B.; *Property Exchange, Ltd.* v. *Wandsworth Board of Works* [1902] 2 K.B. 61; 66 J.P. 435, *per* Romer, L.J., at p. 70 of the former report; *Kingston-upon-Hull Local Board* v. *Jones* (1856) 26 L.J.Ex. 33. In the case of *Evans* v. *Newport Urban Sanitary Authority, supra*, the landowner had not merely added to a public path but had obliterated it, by taking over varying parts of the old path at different points and adding new land here and there, so that the court could only declare that it had become a different and new street.

8.—Rate—*Service of summons—Validity of service in accordance with the Rating and Valuation Act, 1925, s. 59—Proof of service under r. 55 of the Magistrates' Courts Rules, 1952.*

Section 59 of the Rating and Valuation Act, 1925, sets out the methods by which service of a summons may be made. A clerk to the justices has ruled that service by registered post was not good service because the provisions of r. 76 of the Magistrates' Courts Rules, 1952, had not been carried out, namely, that there was no proof that the summons came to the defendant's knowledge.

I should be glad to have your opinion on the following points:

1. Whether the provisions of s. 59 have been superseded by the provisions of reg. 76 of the Magistrates' Courts Rules, 1952, and, if not,

2. Whether service by post (whether registered or not) in accordance with s. 59 of the Rating and Valuation Act, 1949, can be proved by certificates as provided by r. 55 of the Magistrates' Courts Rules, 1952.

LURAME.

Answer.

1. No. *See* r. 76 (4), which expressly preserves the validity of service in any manner prescribed by another enactment.

2. Yes.

OFFICIAL AND CLASSIFIED ADVERTISEMENTS, ETC. (*contd.*).

LEICESTERSHIRE AND RUTLAND COMBINED PROBATION AREA

Appointment of Whole-time Woman Probation Officer

APPLICATIONS are invited for the appointment of a whole-time woman Probation Officer.

The appointment and salary are subject to the Probation Rules and applicants should be between the ages of 23 and 45, except in the case of serving probation officers.

The appointment is superannuable and applicants will be required to pass a medical examination.

Applications, stating age, education, qualifications, experience, and whether or not a current driving licence is held, together with the names and addresses of two referees, should be received not later than Saturday, March 21, 1959.

JOHN A. CHATTERTON,
Clerk to the Combined
Probation Areas Committee.

County Offices,
Grey Friars,
Leicester.

SURREY PROBATION AREA

Appointment of Whole-time Male Probation Officers

APPLICATIONS are invited for the appointment of male Probation Officers in the Surrey Probation Area.

The appointments will be subject to the Probation Rules, and the salary will be in accordance with those rules, subject to superannuation deductions.

Written applications, with names and addresses of not more than three persons to whom reference may be made, should be submitted as soon as possible to the undersigned, from whom forms of application may be obtained.

G. A. NOPS,
Secretary to the
Surrey Probation Committee.

County Hall,
Kingston-upon-Thames.

HAMPSHIRE PROBATION AREA

Appointment of Full-time Probation Officers

APPLICATIONS are invited from persons who have had experience and/or training as Probation Officers for the appointment of the following Probation Officers:

Three male officers (one for Higher Court liaison duties (together with a small case load) and two for the Bournemouth area).

Applications, giving particulars of age, education, present salary, qualifications and experience, with the names and addresses of not more than three persons to whom reference may be made, should be submitted to the Secretary of the Probation Committee, The Castle, Winchester, not later than March 5, 1959.

WILTSHIRE

ADDITIONAL full-time female Probation Officer required, based on Swindon. Conditions and salary subject to Probation Rules. Ability to drive car necessary. Applications, with names of two referees, to reach Clerk of the Peace, County Hall, Trowbridge, by March 14.

KENT PROBATION COMMITTEE

The Kent Probation Committee requires a full-time woman Probation Officer. Salary and appointment will be in accordance with the Probation Rules and applicants must be not less than 23 nor more than 40 years of age, except in the case of a serving officer. The post is superannuable and the successful candidate will be required to undergo a medical examination.

Applications, stating age, qualifications and experience, with copies of not more than three testimonials, must reach the undersigned not later than March 14, 1959.

G. T. HECKELS,
Deputy Clerk of the Peace.

County Hall,
Maidstone.

BERKSHIRE COUNTY COUNCIL

Appointment of Assistant Solicitor

APPLICATIONS are invited for the appointment of Assistant Solicitor, salary within J.N.C. scale "A" (£1,210 × £45—£1,390). Candidates should have been admitted at least two years and preferably have previous local government experience. The post involves responsibility for committee work as well as general legal duties and advocacy. Fuller particulars, with forms of application, from E. R. Davies, Clerk of the Council, Shire Hall, Reading. Closing date March 21, 1959.

LANCASHIRE NO. 10 COMBINED PROBATION AREA

Appointment of Additional Whole-time Male Probation Officer

APPLICATIONS are invited for the appointment of an additional whole-time Probation Officer to work in the Wigan area.

The appointment and salary will be in accordance with the Probation Rules, 1949–58. Candidates must be not less than 23 years nor more than 40 years of age except in the case of a serving officer. The post is superannuable and the selected candidate will be required to pass a medical examination.

Applications, stating age, qualifications and experience, together with copies of two recent testimonials, should reach the undersigned not later than March 16, 1959.

NICHOLAS TUITE,
Secretary to the
Probation Committee.

Arcade Chambers,
Arcade Street, Wigan.

YORKSHIRE OUSE RIVER BOARD

Appointment of Assistant Clerk and Solicitor

APPLICATIONS are invited from solicitors for the above appointment. Salary scale £800 × £40 to £1,120 per annum, commencing point according to experience. Applicants should have conveyancing and advocacy experience. Previous local government experience is desirable but not essential. Applications, stating age, education, qualifications, date of admission and experience, with the names and addresses of two referees, to reach the Clerk of the Board, 21 Park Square South, Leeds 1, by March 14, 1959.

COUNTY BOROUGH OF WALLASEY

Appointment of Chief Constable

APPLICATIONS are invited from duly qualified persons for the appointment of Chief Constable of Wallasey, which will become vacant on September 30, 1959, on the retirement of the present holder.

The authorized strength of the force is 183, and the salary scale is £1,705 × £55 (1) and £60 (2) to £1,880 per annum in accordance with Home Office Circular No. 165/1957. (Scales at present under review).

Terms and conditions of appointment and application forms can be obtained from the undersigned.

Closing date April 1, 1959.

A. G. HARRISON,
Town Clerk.

Town Hall,
Wallasey.

URBAN DISTRICT COUNCIL OF SOWERBY BRIDGE

Deputy Treasurer
A.P.T. III (£845–£1,025)

APPLICATIONS for this appointment are invited from fully qualified accountants (I.M.T.A. or equivalent).

Housing accommodation available if required.

The appointment is subject to one month's notice on either side and to the passing of a medical examination for superannuation purposes.

Applications, quoting two referees, to be received by the undersigned not later than Saturday, March 7, 1959.

A. WOMERSLEY,
Clerk of the Council.

Allan House,
Station Road,
Sowerby Bridge,
Yorkshire, W.R.

DEVON AND EXETER PROBATION AREA

FEMALE whole-time Probation Officer required, working from Torquay. Appointment and salary according to Probation Rules, 1949–1957. Travelling and subsistence allowances according to Scale. Applications, stating age, qualifications and experience, and with names and addresses of two referees, to reach the Secretary, The Castle, Exeter, by March 14, 1959.

HAMPSHIRE COUNTY COUNCIL

APPLICATIONS are invited for the following pensionable appointments on the staff of the Clerk of the County Council. The commencing salary in each case to be according to qualifications and experience. Assistance with removal and other expenses in approved cases. Five-day week.

Committee Clerk, A.P.T. III (£845—£1,025). Previous experience in local government committee work desirable.

Quarter Sessions Assistant, A.P.T. III £845—£1,025). Previous experience in quarter sessions work desirable.

Applications, stating age, education, qualifications and experience, and giving the names of two referees, should reach the Clerk of the County Council, The Castle, Winchester, by March 13.